

EMPLOYMENT DEVELOPMENT DEPARTMENT

Amendment of Sections 3254-3, 3258-1, 3258-2, 3260-1, 3262-1, and Adoption of Sections 3261-1 and 3262-2 of Title 22, California Code of Regulations

VOLUNTARY PLANS – SB 467

Final Statement of Reasons

BACKGROUND:

The Employment Development Department (Department) extends approval to employers to operate voluntary plans for short-term disability insurance coverage, in lieu of State Disability Insurance coverage, as set forth in Part 2, Chapter 6, of the California Unemployment Insurance Code (code) and California Code of Regulations (CCR), title 22. The express purpose of Part 2 of the code is to compensate in part for the wage loss sustained by individuals unemployed because of sickness or injury.

Senate Bill 467 (SB 467) signed by Governor Davis on June 5, 2002, and effective January 1, 2003, amends sections 2610, 3254, 3255, 3260, 3261, 3262, and 3263 of, and adds section 3260.5 to, the code. The new law requires employers to secure voluntary plan trust funds in a separate, specifically identified account in a financial institution. Further, the new law ensures the prompt continuing payment of disability benefits to disabled workers. Upon the Department's termination of a voluntary plan for good cause, the law allows the Department to continue payments of the disability benefits that the voluntary plan discontinued and to require that the employer immediately forward claims and voluntary plan trust funds to the Department. The law provides that the Department can later, if necessary, seek additional monetary recovery from the employer.

NECESSITY:

Under code sections 305 and 306, the Department is authorized to adopt, amend, or repeal regulations for the administration of the functions of the Department. Under code sections 2625, 2706, and 2708, State Disability Insurance benefits are payable from the Disability Fund to individuals who file claims for benefits in accordance with authorized regulations and are eligible to receive such benefits. Under code sections 3251, 3253, 3254, and 3255, a qualified employer is able to provide the disability benefits to employees electing coverage under the employer's voluntary plan.

Before SB 467 was signed by Governor Davis, disabled workers were required to appeal the denial of voluntary plan benefits or failure to pay and receive a favorable decision from the California Unemployment Insurance Appeals Board (Appeals Board) before the Department could begin payments. SB 467 rectified the problem.

SB 467 amended sections 2610, 3254, 3255, 3260, 3261, 3262, and 3263 of, and added section 3260.5 to, the code, relating to disability insurance. The proposed regulatory action clarifies the statutory changes to the provisions governing voluntary plans.

The proposed regulatory action to CCR, title 22, is as follows:

Section 3254-3. Termination of Coverage Under a Voluntary Plan.

Subdivisions (a) (1) and (2) are amended to differentiate “termination” and “withdrawal,” and subdivision (3) is amended to reference correct regulation section.

Section 3258-1. Self-Insured Plans—Security.

Subdivision (b) is amended to clarify the use of “termination” and “withdrawal” within this section.

Section 3258-2. Letter of Credit.

Subdivision (c)(2)(D) is amended to distinguish and clarify “withdrawal” and “termination.”

Section 3260-1. Disposition of Excess Employee Contributions by Voluntary Plans.

Subdivision (d) is amended to correct Financial Code Chapter number specifying securities that a savings bank may purchase. Further amendment allowing investment of trust funds in securities purchased through a commercial bank under Article 4 of Chapter 10 of Division 1 of the Financial Code.

Section 3261-1. Maintenance of Excess Employee Contributions by Voluntary Plans.

This proposed regulation requires voluntary plan employers to maintain employee contributions and income arising from employee contributions in a separate, specifically identified account in a financial institution.

Section 3262-1. Termination of a Voluntary Plan.

This section is simplified and amended by addition of subdivisions (b), (c), and (d). The subdivisions describe transfers of excess employee monies and claims following the withdrawal of approval of a voluntary plan by the director.

Section 3262-2. Appeals Board Decision of Department Termination of Voluntary Plan.

This proposed regulation explains the Department's claims action following Appeals Board decision to employer appeal to Department termination of a voluntary plan.

(CCR, title 22, section 3262-2, was previously entitled "Cancellation by Insurer of a Voluntary Plan." The repeal of this section was designated operative on August 22, 1996.)

PLAIN ENGLISH CONFORMING STATEMENT:

The Department has drafted the proposed regulatory action in plain English pursuant to section 11346.2(a)(1) of the Government Code.

PUBLIC NOTICE AND WRITTEN COMMENT PERIOD, AND WRITTEN COMMENT:

On October 31, 2003, the Office of Administrative Law printed a public notice for this regulatory action in the California Regulatory Notice Register, and the Department posted this public notice on its Internet website. A copy of the public notice, the text of the proposed regulatory action, and the initial statement of reasons were mailed to everyone known to be interested in the Department's regulations.

During the 45-day written comment period which was held from October 31 through December 15, 2003, no one requested a public hearing. However, the Department received one comment from Thomas Larkin on the proposed regulatory action (the e-mailed comment is included as part of this rulemaking file at Tab No. 5). Mr. Larkin's comment is indicated below, followed by the Department's response.

**E-mail received from Thomas H. Larkin Jr., The Larkin Company,
dated November 10, 2003.**

Comment

Mr. Larkin had comments pertaining to proposed section 3261-1, "Maintenance of Excess Employee Contributions by Voluntary Plans" as follows:

According the [sic] the Voluntary Plan Unit of the EDD, the interpretation they will give to SB 467 is that each individual plan, even if they are multiple plans sponsored by the same parent company, must have its own individual account. We believe this is an unnecessary burden on companies. The intent of SB 467, as we understand it, is to eliminate the practice of commingling of plan trust funds with employer assets. It is also, obviously, to protect the assets of the voluntary plan. We believe this can be achieved, where an employer has multiple plans, by having all of the plans' assets segretated [sic] into a single account. Of course, the employer may wish to have individual accounts.

Response

Unemployment Insurance (UI) Code section 3261 states in part that all employee contributions and income arising therefrom received or retained by an employer under an approved voluntary plan are trust funds that are not considered to be part of an employer's assets. An employer shall either maintain a separate, specifically identifiable account for voluntary plan trust funds in a financial institution, or an employer may transmit voluntary plan trust funds, including any earned interest or income, directly to the admitted disability insurer.

This regulation is consistent with UI Code section 3261 as the regulation requires a separate identifiable account for each voluntary plan.

FISCAL IMPACT:

Anticipated costs or savings in federal funding to the State: None

Anticipated costs or savings to any State Agency: None

Anticipated costs or savings to any local agency or school district: None

Significant statewide adverse economic impact: The Department does not anticipate this regulatory action will by its terms result in any costs to the federal government, to State government, to local county governments, to private individuals, or to businesses and small businesses. Thus, no costs were shown on the Economic and Fiscal Impact Statement.

The Department has made an initial determination that the proposed regulatory action will not have a significant statewide adverse economic impact directly affecting businesses including the ability of California businesses to compete with businesses in other states. There are no additional costs or savings because this regulation makes only non-substantive changes. The Department has determined that the proposed regulatory action will not affect the creation or elimination of jobs within the State of California; the creation of new businesses

or the elimination of existing businesses within the State of California; or the expansion of businesses currently doing business within the State of California.

The costs impact on representative persons or businesses: The Department is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed regulatory action.

Anticipated impact on housing costs: The proposed regulatory action will have no effect on housing costs.

Anticipated nondiscretionary costs or savings imposed upon local agencies: None

SMALL BUSINESS IMPACT:

The Department has determined that the proposed regulatory action would have no effect on small businesses because it does not impose any new mandates on small non-voluntary plan businesses. The proposed regulatory action does not require that small businesses take any action or refrain from taking any action in regards to conducting business. Small voluntary plan employers may however, incur expenses associated with opening and maintaining the financial institution account. However, existing regulation permits voluntary plan employers to charge reasonable expenses arising from the administration of the voluntary plan against the voluntary plan fund.

LOCAL MANDATE DETERMINATION:

The Department has determined that the proposed regulatory action will not impose any new mandates on school districts or other local governmental agencies or any mandates which must be reimbursed by the State pursuant to Part 7 (commencing with section 17500), Division 4 of the Government Code.

CONSIDERATION OF ALTERNATIVES:

In accordance with section 11346.9(a)(4) of the Government Code, the Department has determined that no alternative considered would be more effective in carrying out the purpose for which this action was intended than the proposed regulatory action. The Department has also determined that no alternative would be as effective and less burdensome to affected private persons than the proposed regulatory action.
